

**Before the
Federal Communications Commission
Washington, DC**

In the matter of:

Comments by Greg Weisiger on the Eligible)	
Services List for Universal Service Mechanism)	FCC 05-158
for Schools and Libraries)	
)	
Federal State Joint Board on Universal)	
Service)	CC Docket No.
02-6		

The Federal Communications Commission seeks comment on the Universal Service Administrative Company (USAC or Administrator) proposed Eligible Services List (ESL) for E-Rate Funding Year 2006. It is my pleasure to offer the Commission these comments on the proposed ESL for schools and libraries to utilize as they prepare to enter into contracts or consider continuing existing services that may or may not comply with requirements of this proposed list.

Proposed List Adds Confusion to Already Confusing Program

Without question the E-Rate program has been complex since its inception. With each change in law, FCC Order, and Administrator policy change, the program has become even more complex. Despite efforts to streamline and simplify the program, administrative burdens on applicants have actually increased over the years. Consequently, smaller applicants have wholesale abandoned the program as the cost of compliance and fear of funding denial, application rejection, or post funding demands to return funds have made participation in this program more costly than the benefits. This reality is far removed from the simple discount program envisioned in the original legislation in the Telecommunications Act of 1996.

Comments on the Proposed ESL

In my comments last year, I asked that the FCC require the Administrator to include all policies and application evaluation criteria in the list. I reiterate that request with these comments.

Protecting Our Children while Killing the E-Rate Program

The Children's Internet Protection Act (CIPA) was incorporated into the E-Rate program by the Commission in an unusual manner. While CIPA is an important law and schools and libraries should protect children from the dangers inherent with browsing the Internet, initial Commission regulations opened the door for blatant disregard for the law. The reactive fix for initial CIPA regulations proposed in this ESL will lead to an impossible situation for application preparation and Administrator evaluation.

On the first page of the ESL is a statement titled: **NOTE CONCERNING COMBINED TELECOMMUNICATIONS AND INTERNET ACCESS SERVICES.** The statement warns applicants that combine both telecommunications services and Internet Access in a single bundled service to separate service requests on the Form 470 and to divide the price of services between Telecommunications and Internet Access on separate fund requests – keeping in mind that only common carriers may provide telecommunications services. In the event that a

This proposed requirement simply ignores the realities of technology today. The vast majority of communication is transmitted digitally. Most is transmitted using some form of Internet Protocol. For example, sales of traditional PBX's have dropped to almost nil, while sales of Voice over IP equipment have exploded. Corporations are saving millions of dollars in telecommunications costs by using the Internet to send and receive telephone calls. The telephone calls are transported on broadband connections leased by companies from either telecommunications common carriers or, increasingly, by non-common carriers providing raw bandwidth in response to customer demand.

The proposed ESL would require all schools and libraries that use VOIP technology transmitted over a single Wide Area Network provided by such non-common carriers to either change service providers or abandon the VOIP technology. Alternatively, the applicant could keep existing services and forgo E-Rate discounts. Many applicants will choose the latter.

Services such as VOIP is but one example of a "telecommunications" type of service that would impact thousands of applicants. More troubling is the absence of a clear definition of what is a "telecommunications" service verses "basic conduit access" to the Internet, as described in the ESL. The proposed ESL describes Internet Access as follows:

Eligibility Requirements for All Internet Access Services:

Descriptions in this section are limited to the provision of “basic conduit access” to the Internet, and apply to services, not purchases of equipment used in Internet Access. Service Providers for Internet Access need not be telecommunications carriers. Funding in this category will not be provided for transport of point-to-point connectivity of data, video, or voice applications that are to be provided only by telecommunications carriers.

However, within the individual descriptions of eligible and ineligible Internet Access services is a description of “Internet Access” itself, which includes the following:

Basic conduit access to the Internet, regardless of technology platform, is eligible for discount. Such access may include transport of digital communication using any Internet based protocols, including encapsulation of data, video, or voice so long as this is the most cost effective way to access the Internet.

The mention of “voice, video, and data” in the two sections seems to indicate that point-to-point connectivity is ineligible for funding as an Internet service but “encapsulated” voice, video, and data is eligible. There is no elaboration of the difference. What exactly does “encapsulation” mean?

Within the scope of new products and services typically transported over the Internet, a goodly number will raise subtle questions of eligibility under the Internet Access category of service. For example, a school division purchases computer video cameras for all teachers’ computers and lab computers so that distance learning teachers can communicate “face-to-face” with students in distance learning courses. The effect is a “point-to-point” connection; however, the transmission never reaches the public switched network but is delivered exclusively over the Internet. Is this service eligible or non-eligible for delivery over a WAN provided by a non-common carrier?

In another case, a school division may install equipment to connect numerous video conferencing sites for live conferences. This transmission is known as “point-to-multipoint” transmission. While “point-to-point” transmission is ineligible, no mention is made of the former. When eligibility or non-eligibility turns on a single word, it is very important to clearly describe what terms mean.

Poor Training Leads to Poor Decisions

I reiterate here my remarks during the May 8, 2003 FCC E-Rate forum that the SLD had and continues to inadequately train program reviewers. Evidenced by early denials in Fund Year Eight, it remains apparent that Administrator reviewers do not understand the current ESL and how to apply it to requested services. In one case in Virginia the reviewer required the applicant to shift an entire request for a WAN from the Internet Access category of service to the Telecommunications category, despite assertions by the applicant that the service was entirely Internet related. The application was denied because the service provider was not considered a “common carrier.” In this instance the reviewer acted in direct opposition to the proposed ESL. Had the vendor been a common carrier and the funding approved, the applicant would not be required to comply with CIPA because the Administrator had determined the service was simply telecommunications. A post commitment audit would have proved otherwise. Twelve Year Eight Virginia applications have been denied because the reviewer has been unable to determine the eligibility of funding requests. Another request was denied for the following reason: “30% or more of this FRN includes a request for Internal Connection which is an ineligible service(s) based on program rules.” This reviewer should have shifted the category of service to Internal Connections rather than deny it outright.

Getting it Wrong and the Chilling Effect of COMAD

If an applicant inadvertently receives funding for ineligible services even after carefully trying to understand subtle nuances of the ESL, the applicant faces the risk of being required to return E-Rate funds to the Administrator. With audits and site visits uncovering millions of dollars in improperly disbursed funding (much not related to waste, fraud, or abuse), the effect is that applicants are never confident that discounts can be counted on - even years after work has been performed and payment made. If a high discount school or library contracts for an expensive capital project with E-Rate discounts – 90 percent paid by the fund – and is later required to pay it back because of confusion over a single word, the school or library could face bankruptcy, dedicated employees fired, and possibly public ridicule. This is not the way to operate a simple discount program that benefits school children and library patrons.

Conclusion

I ask the Commission to completely review this proposed ESL document and remove all ambiguity and confusing language. As currently written, it is wholly and entirely unacceptable.

Sincerely,
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